

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

JASON T. DUKE

PLAINTIFF

VS.

CAUSE NO. 1:07-CV-75

TRONOX , LLC

DEFENDANT

ORDER

The court concludes that plaintiff's motions to continue and to extend the CMO deadlines in this case are well taken and should be granted. This extension and continuance are sought so that plaintiff may conduct further discovery and designate an expert witness in this case. In order to determine whether "good cause" exists for the extension of the deadlines in question, this court must consider (1) the explanation for the failure; (2) the importance of the testimony; (3) potential prejudice in allowing the testimony; and (4) the availability of a continuance to cure such prejudice. *Geiserman v. MacDonald*, 893 F.2d 787, 791 (5th Cir. 1990). In seeking an extension, plaintiff notes that there was a change in counsel approximately two months prior to the expiration of the expert designation deadline in this case. Plaintiff further notes that his new counsel faced difficulties in obtaining the litigation file in this case from the prior counsel. The court finds this explanation to support the requested extension, particularly considering that the expert testimony at issue is crucial to plaintiff's case. Finally, the court concludes that any prejudice faced by defendant can be cured by a continuance.

The court cautions that plaintiff should expect no further leniency with regard to scheduling matters, but, with this caveat, the motions to continue [38-1] and to extend the CMO deadlines [36-1] in this case are hereby granted. The trial in this matter is hereby continued until

a date to be determined later, and the court requests that the Magistrate Judge issue a new case management order in this case. Defendant's motion for summary judgment [29-1] is hereby dismissed without prejudice to re-filing at a later date.

This the 22nd day of April, 2008.

/s/ MICHAEL P. MILLS
CHIEF JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI